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FISCAL IMPACT STATEMENT

LS 6704

BILL NUMBER: HB 1300

NOTE PREPARED: Feb 20, 2004

BILL AMENDED: Feb 19, 2004

SUBJECT: Insanity Defense.

FIRST AUTHOR: Rep. Bottorff

FIRST SPONSOR: Sen. Long

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It requires notice to be given to certain persons before a defendant who was found not responsible for a crime by reason of insanity and committed to a mental health facility: (1) is allowed outside the facility while not restrained and in custody; (2) is given a new security classification; (3) is transferred to another facility; or (4) is discharged.
- B. It provides for the provision of competency restoration services by the division of mental health and addiction or by a third party.
- C. It requires notice to be given as soon as practicable after the committed individual escapes.
- D. It provides that a defendant who interposes a defense of insanity may not introduce evidence from a medical witness with whom the defendant cooperated unless: (1) after being ordered to do so by the court, the defendant cooperates with medical witnesses appointed by the court; or (2) the defendant shows by a preponderance of the evidence that the defendant's failure to cooperate with medical witnesses appointed by the court was caused by the defendant's mental illness.

Effective Date: July 1, 2004.

Summary of Net State Impact: (Revised) *Competency Restoration Services* - This bill would affect the expenditures of the Department of Corrections (DOC) and the Department of Mental Health and Addictions (DMHA). Total state expenditures would not likely be significantly affected if the number of defendants found incompetent to stand trial remained relatively low. The expenditures that would be affected would likely fall within existing department appropriations and/or be shifted between the two departments. The DMHA, however, reports that additional funding will be necessary if the number of defendants significantly increases.

This bill allows the DMHA to contract with third-party entities to provide services for defendants in either a residence, community setting, or correctional facility. It is likely that a slight decrease in expenditures will be realized by the DMHA if a contract is for services in either a residence or community setting. However, if the services are provided in a correctional facility, the DMHA would likely experience an increase in expenditures. The bill would affect very few defendants. Thus, any increases or decreases in expenditures would be minimal.

This bill also allows a defendant's service provider to petition the court to retain the defendant (instead of returning them to court) and provide additional services. The DMHA may assume additional expenditures for providing the extended services. Furthermore, the DOC may observe a slight reduction in expenditures. The DMHA would absorb the cost of housing the defendant. The DMHA reports that this bill will only apply to approximately 1% to 2% of defendants, and so any increases or decreases in expenditures would be small.

Explanation of State Expenditures: *Provision A and C* - The added costs associated with the notification requirements specified in this bill will depend on:

- the number of persons who are committed to a governmental facility for not being responsible for committing a crime by reason of insanity,
- the frequency with which these committed persons either change security classification, are transferred to other facilities, or are released without supervision,
- the method that the facility uses to transmit these notifications to the specified persons.

The method of transmission can include electronic mail, fax, or postal letter. Almost all prosecuting attorney offices have electronic mail and to the extent that any other individual who is included in the court order for notification purposes also has electronic mail, the added costs to the facility will be minimal.

The Department of Mental Health reports that seven persons are currently in DMHA facilities on a "Not Guilty By Reason of Insanity" commitment. It is likely that DMHA will also receive three additional persons for this commitment in the near future.

(Revised) *Provision B -- Incompetence to Stand Trial Provisions:* Current statute requires the DMHA to confine a defendant to a state institution if (1) they are not competent to stand trial or (2) their competence to stand trial is questionable. This bill allows the DMHA to contract with third-party entities to provide restoration services in alternative venues. Contracted restoration services may be provided to defendants (1) in the location where the defendant currently resides or (2) in the least restrictive setting appropriate to the needs of the defendant. The latter includes correctional facilities.

Current statute also requires a defendant whose competence to stand trial was previously questioned to be returned to court after their competence has been certified by the DMHA. The bill would allow the DMHA (or a DMHA-contracted entity) to petition the court to postpone the return of a defendant.

DMHA and DOC budgets: Total state appropriations for the DMHA for SFY 2004 are \$273 M; the DOC was appropriated \$136.7 M. Any impacts on the DOC or the DMHA expenditures would (1) fall within existing department appropriations, and/or (2) shift between the two departments.

The DMHA, however, reports that additional funding will be necessary if the number of defendants found incompetent to stand trial significantly increases.

Contracting Costs: Contract amounts for the DMHA vary depending on the level of services a defendant

requires. Furthermore, the cost to contract for services (where the defendant is currently residing or in a community setting) would be either equal to or slightly less than the cost to provide services in a state institution. Reductions in expenditures would likely be a result of lower housing costs. The DMHA, however, reports that decreases in expenditures would be minimal; this bill would apply to very few defendants. There are approximately one hundred defendants residing in state institutions (for incompetence to stand trial issues). Of these defendants, approximately five would be affected by this bill. Reduced expenditures to the DMHA are dependent on the number of defendants housed in residential or community settings and their contract costs.

Department of Corrections: Current statute requires defendants who are found incompetent to stand trial to be moved to a state institution. State institutions, however, do not have the ability to house high-security inmates. This bill would allow the DOC to retain the defendant in the correctional facility. In addition, it allows the DMHA to either contract for services for the defendant or provide services themselves. Expenditures for housing the defendant would be shifted from the DMHA to the DOC.

The DMHA reports that contracting for services at a correctional facility would likely be more expensive than to provide services at a state institution. Defendants residing in correctional facilities would probably require a higher level of services. For example, the use of a forensic psychiatrist is often necessary. Forensic psychiatrists provide specialized services, thus, their contracts will likely be negotiated at a higher rate than that of other psychiatrists. Furthermore, there are only a few forensic psychiatrists in Indiana; contracts may need to include travel expenses. It is likely that the forensic psychiatrists will not reside in close proximity to the defendant.

Currently, there are two defendants in correctional facilities that this bill would apply to. Increases in expenditures for the DMHA are dependent on the number of defendants affected by this bill and the cost to contract for services needed.

Director or Medical Director Petitions: This bill also allows the director or medical director of the entity (1) from which the defendant is receiving competency restoration services or (2) to which the defendant has been civilly committed, to submit a petition to postpone the return of the defendant to court. This would allow the DMHA to retain the defendant and provide additional services. A defendant may be retained for six months, less any time the defendant has already received services. The DMHA would assume additional expenditures for housing the defendant and providing treatment. The DOC would realize a decrease in expenditures. The cost to house the defendant during the additional time period would be absorbed by the DMHA. The DMHA reports that this may occur one or two times a year, thus, increases in expenditures for the DMHA and decreases in expenditures for the DOC would be minimal. Actual increases and decreases in expenditures are dependent on the number of defendants who are retained and the length of time that they are retained.

Background Information: A defendant is considered competent to stand trial if (1) they have the ability to understand the proceedings and (2) they have the ability to participate in their own defense. The average cost to house a resident in a state institution is approximately \$350 per day. The cost to house a male inmate is between \$48.06 (minimal security) and \$83.78 (maximum security) a day. The cost to house a female inmate is \$188.29 a day. Differences in housing costs are mainly due to additional mental health services provided to defendants residing in state institutions and excess capacity in the state institutions.

Explanation of State Revenues:

Explanation of Local Expenditures: Any fiscal effects from *Provision D* are speculative. The costs to the counties will depend on whether the defendant is indigent.

- Defendants who are not indigent pay for their own medical experts to testify, and the court will pay for another medical expert so the court will have other counterbalancing testimony.
- If the court declares the defendant to be indigent, then the selection of medical experts will depend on local practice. Often, the court may present a list of available experts and allow the defendant to select one to examine the defendant. The court will often select another expert as well to get more than one perspective.

If the defendant does not cooperate with a court-appointed witness, the court may not allow the testimony of the defendant's own medical expert. Since expert witnesses are generally paid by the hour, if the expert witness does not testify and the court is paying the expert's fee, then the costs to the court will be reduced.

Explanation of Local Revenues:

State Agencies Affected: Division of Mental Health and Addiction.

Local Agencies Affected: Prosecuting Attorneys from counties where persons are committed.

Information Sources: Steve Johnson, Prosecuting Attorneys Council; Melanie Bella, OMPP, (317) 233-4455; Willard Mays, Assistant Deputy Director for Policy Development, Department of Mental Health and Addictions, 232-7894; Suzanne Clifford, Director, Department of Mental Health and Addictions, 232-7845.

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